IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN, JAIPUR BENCH, JAIPUR

S. B. CIVIL MISC. APPEAL NO. 53/1994

Bhura & Ors vs. Shri. Parshottam Dass & Ano.

Date of Judgment: 26th February 2007

Hon'ble Mr. Justice R. S. Chauhan

Mr. Nitin Jain for the Appellant
Mr. Tripurari Sharma with
Mr. H, K. Sharma for the Respondent.

(Per Court):

The rejection of the claim petition by the Commissioner, Workmen Compensation, Tonk, vide Order dated 24-11-93, has prompted the appellants to challenge the said Order before this court.

The brief facts of the case are that the son of appellant No. 1, Ram Karan, was working as a laborer under respondent No. 1. He was hired for the purpose of loading and unloading of "Kadvi" on the truck owned by the respondent No. 1. On 13-6-1991, while the said truck was crossing the bridge on the Banas River, at night, his son fell

from the truck and died. In order to conceal the said accident, his son's body was cremated without reporting the case to the police and without holding any autopsy. Since the appellants were financially dependent on the workman, they filed a claim petition before the learned Commissioner. After going through the oral and documentary, the learned Commissioner rejected the claim petition ostensibly on two grounds: firstly, the deceased was not covered under the definition of "workman" as given under the Act. Secondly, the claimant could not prove the existence of the employer and employee relationship between the deceased workman and the respondent No. 1. Thus, this appeal before this court.

Mr. Nitin Jain, the learned counsel for the appellant has argued that the learned Commissioner has ignored the definition of "workman" as given under Section 2 (1) (n) (i) of the Workmen's Compensation Act, 1923 Act (henceforth to be referred to as 'the Act', for short). The deceased is covered by the said definition. Therefore, the petition has been rejected on wrong premises. Secondly, if the logic of the learned

Commissioner is accepted that the workman was hired and paid not by the respondent No. 1, but by his driver, even then the workman was working under a contractor. The respondent No. 1 then is deemed to be the principal employer. Under Section 12 of the Act, the principal employer is responsible for payment of the compensation under the Act. The learned Commissioner has ignored the provisions of Section 12 of the Act. Hence, substantial questions of law are involved about the applicability of the Section 2 (1) (n) (i) and of Section 12 of the Act.

On the other hand, Mr. Tripurari Sharma, the learned counsel for the respondent, has argued that although the deceased is covered by the definition of “workman” as given in the Act, but the relationship of employer and employee has not been established. Hence, the learned Commissioner was justified in rejecting the claim petition. He has, therefore, supported the impugned Order.

We have given our anxious consideration to the rival

contentions of the learned counsels and have perused the impugned Order.

Section 2 (n) defines the term “workman” as meaning, amongst other persons, those persons “employed in any such capacity as is specified in Schedule II, whether the contract of employment was made before or after the passing of this Act and whether such contract is expressed or implied, oral or in writing…” In Schedule II, item No. (i) includes those workmen who are “employed, otherwise than in a clerical capacity or on a railway, in connection with the operation, repair or maintenance of a lift or a vehicle propelled by steam or other mechanical power or by electricity or in connection with the loading or unloading of any such vehicle.” Admittedly the deceased in the present case was employed upon a truck—a vehicle propelled by mechanical power—for the purpose of loading and unloading the vehicle. Thus, clearly the deceased fell within the definition of workman given in the Act. Hence, the learned Commissioner was not justified in holding that the deceased did not fall under the definition of “workman” as

given in the Act.

According to the learned Commissioner, the witnesses have claimed that the deceased was paid not by the respondent No. 1, but by his driver. Therefore, the claimants have failed to prove the existence of relationship of employer and employee between the deceased workman and the respondent No. 1. But, the learned Commissioner has over looked certain glaring facts. Firstly, the witnesses are rustic and illiterate people. They may not understand the distinction between the principal employer and the contractor. Secondly, even if the driver were the paymaster of the deceased person, naturally he was not paying the deceased without the authority of the respondent No. 1. Thus, the respondent No. 1 was the principal employer. Thirdly, the Act is a beneficial piece of legislation. Fourthly, the Commissioner being a quasi-judicial authority is not bound by the technicalities of the Evidence Act. Fifthly, the learned Commissioner had ample power to summon the driver of the truck to inquire about the nature of his relationship with the deceased workman.

The witnesses claimed that the driver of the truck paid the deceased. Obviously, the driver did not pay the deceased out of charity. The driver must have paid the wages to the deceased under the authority of the respondent No. 1, or in the capacity of a contractor. In either case, Section 12 of the Act is applicable to the present case. Under Section 12 of the Act, the respondent No. 1 is liable to pay the compensation to the claimants. Thus, the learned Commissioner has misdirected himself while deciding the claim petition.

In the result this appeal is allowed and the case is remanded to the Commissioner, Workmen Compensation, Tonk for deciding the claim petition in accordance with law. Since the case is an old one, the learned Commissioner shall endeavor to decide the case as soon as possible and latest by December 2007. There shall be no order as to costs.

R. S. Chauhan J.